

424-20/JTN
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ELSIE CLEMENTE,

Plaintiff,

v.

CHIPOTLE MEXICAN GRILL, INC.,

Defendant.

-----X

Case No.:

NOTICE OF REMOVAL

Removed from:
Supreme Court of the State of New York,
County of Kings
Index No.: 510734/2020

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK:**

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and Local Civil Rule 81.1, Defendant Chipotle Mexican Grill, Inc. (hereinafter the “Defendant”) hereby removes this action from the Supreme Court of the State of New York, County of Kings, to the United States District Court for the Eastern District of New York, and respectfully avers as follows:

1. This Notice of Removal is made subject to the right of Defendant to appear specially and interpose any defense, including but not limited to any defenses made pursuant to Federal Rule of Civil Procedure 12(b).

2. This Honorable Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) and removal is proper pursuant to 28 U.S.C. § 1441.

3. This Honorable Court occupies the district and division in which this action was pending. *See* 28 U.S.C. §§ 112(c), 1446(a).

4. Defendant has been served with process in a civil suit filed in the Supreme Court of the State of New York, County of Kings, entitled “*Elsie Clemente v. Chipotle Mexican Grill, Inc.*” and bearing Index No. 510734/2020 on the docket of that court. According to the affidavit of service filed by Plaintiff, service of process was completed on Defendant on July 16, 2020.

5. True and correct copies of the Summons, Verified Complaint, and Affidavit of Service are attached hereto as Exhibit “A”.

6. On August 14, 2020, Defendant filed a Verified Answer to the Verified Complaint, a true and correct copy of which is attached as Exhibit “B”. Exhibits “A” and “B” constitute all process, pleadings, and orders received by Defendant to date in the suit pending in the Supreme Court of the State of New York, County of Kings.

**REMOVAL ON THE BASIS OF DIVERSITY
JURISDICTION IS PROPER AND TIMELY**

7. Upon information and belief, at all material times relevant hereto, Plaintiff Elsie Clemente was and is a natural person residing in the State of New York, County of Kings, as stated in the Summons. (Exhibit “A”).

8. At all material times relevant hereto, Defendant Chipotle Mexican Grill, Inc. was at the times complained of and is now a Delaware Corporation, with an office and its principal place of business located in Newport Beach, California.

9. The parties therefore have complete diversity of citizenship insofar as Plaintiff is a citizen of New York and Defendant is a citizen of Delaware and California.

10. In her Verified Complaint, Plaintiff sought damages for alleged personal injuries, but did not explicitly state the amount of damages alleged. (Exhibit “A”).

11. On November 11, 2020, Plaintiff served a response to Defendant’s Request for Supplemental Demand for Relief pursuant to CPLR § 3017, in which she asserted damages in the

amount of \$1,000,000.00 (one million dollars), a sum which satisfies the amount in controversy requirement for diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). A True and correct copy of Plaintiff's Response to Defendant's Request for Supplemental Demand for Relief is attached as Exhibit "C".

12. The Second Circuit has made clear that "the removal clock does not start to run until the plaintiff serves the defendant with a paper that explicitly specifies the amount of monetary damages sought." *Moltner v. Starbucks Coffee Co.*, 624 F.3d 34, 38 (2d Cir. 2010). Accordingly, this Notice of Removal is timely, pursuant to 28 U.S.C. § 1446(b), because it is being filed within thirty (30) days of November 11, 2020, when Plaintiff served her response to Defendant's Request for Supplemental Demand for Relief, which explicitly specified the amount of monetary damages sought. *See* 28 U.S.C. § 1446(b).

13. There are no other parties to this action other than those mentioned herein.

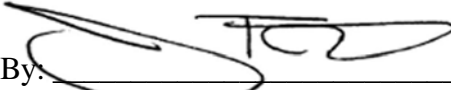
14. Pursuant to 28 U.S.C. § 1446, a copy of this Notice of Removal is being served on Plaintiff, through her counsel, and a Notice of Removal will be filed with the Clerk of the Court for the Supreme Court of the State of New York, County of Kings.

15. Defendant reserves the right to amend or supplement this Notice of Removal and/or to urge additional arguments in support of its entitlement to remove.

WHEREFORE, Defendant prays that the action now pending against it in the Supreme Court of the State of New York, County of Kings, described above, be removed to this Honorable Court and proceed herein; that the State Court proceed no further in this litigation; and that Defendant have such other, further and different relief as this Court may deem just and proper in the premises.

Dated: New York, New York
December 1, 2020

FREEHILL HOGAN & MAHAR LLP
Attorneys for Defendant Chipotle Mexican Grill, Inc.

By:  _____

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STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

I, Carol Chakwin, being duly sworn, deposes and says that I am not a party to the within action, am over 18 years of age and have an office and place of business in New York, New York.

On December 1, 2020, I served a true and correct copy of the within defendant Chipotle Mexican Grill, Inc.'s **NOTICE OF REMOVAL** upon:

Feinstein & Feinstein , ESQS.
ATTN: Charles Feinstein, Esq.
Attorneys for Plaintiff
61 Broadway, Ste 2820
New York, NY 10006
Tel: (212) 363-3000
CFeinstein@Feinsteinlaw.com

at the address(es) designated by said attorneys for the purpose of depositing a true copy in a pre-paid properly addressed envelope in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

A handwritten signature in cursive script that reads "Carol Chakwin". The signature is written in dark ink and is positioned above a horizontal line.

Carol Chakwin